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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,661	09/29/2003	Elof Eriksson	CEL.728.US	2357

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LEGAL DEPARTMENT INTELLECTUAL PROPERTY
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EXAMINER

TYSON, MELANIE RUANO

ART UNIT	PAPER NUMBER
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3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/673,661	Applicant(s) ERIKSSON ET AL.	
	Examiner Melanie Tyson	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/13/05 & 3/31/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "drum end-disk" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 8 is objected to because of the following informalities: the limitation "a drum end-disk" is not shown in the drawings. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisenberg (Patent No. 6,039,760) in view of Schutz (Patent No. 3,037,509). Eisenberg discloses a dermal grafting system comprising a dressing (sponge membrane) for receiving tissue particles (skin sample) and culturing the growth of a dermal tissue graft (column 3, lines 29-48). The dressing is "chambered" since it must be incubated in order to promote growth. Eisenberg further discloses obtaining a tissue sample, however, does not disclose a tissue particle harvester assembly and the step of collecting tissue particles from a tissue particle collector.

Schutz discloses a dermal tissue grafting system (Figures 1 and 2) comprising a tissue particle harvester assembly (housing 10, cutting head 16, and drive means 36) and a tissue particle collector (storage container 20). Schutz teaches removing particles of live skin from a donor area, collecting the particles in a container, and applying the particles to a recipient area (column 1, lines 10-13, and column 2, lines 1-10). However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to collect the tissue particles from the particle collector taught by Schutz and seed the dressing of Eisenberg in order to provide a strong graft that can be easily prepared and maintained in sufficient quantities, has a high success ("take") rate, and enables a single treatment of skin wounds (column 3, lines 5-8; column 6, lines 59-67 and column 7, lines 1-4).

6. Claims 2-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisenberg (Patent No. 6,039,760) in view of Schutz (Patent No. 3,037,509) as applied to the claims above, and further in view of Adamson et al. (Patent No. 6,391,034 B1). Eisenberg in view of Schutz discloses a device as described above, however, does not disclose a rotating cutting tool. Adamson et al. disclose a tissue particle harvester assembly (Figures 1, 5, and 9), since the assembly cuts and collects tissue. Adamson et al. further disclose a harvester housing (12) having an interior space (cavity 14) and an orifice (top of cavity 14), a cutting tool (or cutting "drum" 90) having a cutting surface (blades 92), a rotatable shaft (48; the first end 52 engages the drive means 42; column 3, lines 22-24), an end-disk (bolt; not labeled), and a drive means (pneumatic motor 42). Figure 2 shows the end-to-end width of the cutting tool is closely receivable in a width of

the interior space (14) of the housing. Although the system disclosed is used to remove "unwanted" tissue, the system disclosed is capable of cutting and collecting dermal tissue. It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the particle harvester assembly of Eisenberg in view of Schutz as taught by Adamson et al. in order to remove tissue quickly, which minimizes the time a patient spends under anesthetic (column 2, lines 10-13).

The depth of tissue removal is adjustable by an adjustment bracket (60; column 3, lines 28-30). Adamson et al. does not disclose adjusting the device such that the tissue-cutting surface projects through the orifice of the harvester in the range of about .01-.9 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the device such that the tissue-cutting surface projects through the orifice of the harvester in the range of about .01-.9mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Thursday 9:00 a.m. - 6:30 p.m., alternate Fridays 9:00 a.m. - 5:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson *MT*

December 12, 2006

[Signature]
ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER

12/22/06